

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Rachel Adler	Team: Squad #3	CCRB Case #: 201904264	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/15/2019 5:00 PM	Location of Incident: 160th Street and Archer Avenue	Precinct: 103	18 Mo. SOL 11/15/2020	EO SOL 7/2/2021	
Date/Time CV Reported Thu, 05/16/2019 3:45 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 05/16/2019 3:45 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Holder	18361	951823	103 PCT
2. SGT Edwin Espinal	03384	934831	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM James Holder	Abuse: Police Officer James Holder stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM James Holder	Abuse: Police Officer James Holder frisked § 87(2)(b)	
C.POM James Holder	Abuse: Police Officer James Holder searched § 87(2)(b)	
D.POM James Holder	Abuse: Police Officer James Holder searched the vehicle in which § 87(2)(b) was an occupant.	
E.POM James Holder	Abuse: Police Officer James Holder interfered with § 87(2)(b)'s use of a recording device.	
F.POM James Holder	Abuse: Police Officer James Holder damaged § 87(2)(b)'s property.	
G.SGT Edwin Espinal	Abuse: Sergeant Edwin Espinal threatened to seize § 87(2)(b)'s property.	
H.POM James Holder	Abuse: Police Officer James Holder failed to provide § 87(2)(b) with a business card.	
I.POM James Holder	Abuse: Police Officer James Holder failed to provide § 87(2)(b) with a business card.	
§ 87(4-b), § 87(2)(g)		

## Case Summary

On May 16, 2019, § 87(2)(b) filed this complaint on behalf of himself and his girlfriend § 87(2)(b) via the CCRB call processing system. The case was reassigned from Investigator Magdalena Azmitia to the undersigned investigator on February 13, 2020.

On May 15, 2019, at approximately 5:00 P.M., in the vicinity of 160<sup>th</sup> Street between Archer Avenue and Jamaica Avenue in Queens, PO James Holder of the 103<sup>rd</sup> precinct, who was working with Sgt. Edwin Espinal of the same command, pulled over the vehicle that § 87(2)(b) was driving for an alleged New York State Vehicle and Traffic Law infraction (**Allegation A, Abuse of Authority: § 87(2)(g)**). Both Sgt. Espinal and PO Holder told § 87(2)(b) that they smelled marijuana in the vehicle and Sgt. Espinal asked § 87(2)(b) to step out of the vehicle. PO Holder allegedly patted § 87(2)(b) down and entered his sweatshirt and pants pockets (**Allegations B and C, Abuse of Authority: § 87(2)(g)**). PO Holder then searched the interior of the vehicle, which was owned by § 87(2)(b) (**Allegation D, Abuse of Authority: § 87(2)(g)**). § 87(2)(b) approached the scene of the incident while PO Holder was conducting the vehicle search. During the vehicle search, PO Holder allegedly stopped the video recording on § 87(2)(b)'s cell phone (**Allegation E, Abuse of Authority: § 87(2)(g)**) and damaged a seat panel in the vehicle (**Allegation F, Abuse of Authority: § 87(2)(g)**). Sgt. Espinal then allegedly threatened to seize § 87(2)(b)'s vehicle (**Allegation G, Abuse of Authority: § 87(2)(g)**). During the interaction, PO Holder failed to offer § 87(2)(b) and § 87(2)(b) a business card (**Allegations H and I, Abuse of Authority: § 87(2)(g)**). § 87(4-b), § 87(2)(g)

Neither § 87(2)(b) nor § 87(2)(b) was arrested or given any summonses.

The investigation obtained body-worn camera (BWC) footage of the incident from Sgt. Espinal and PO Holder and cell phone video from § 87(2)(b) (**01-03 Board Review**).

## Findings and Recommendations

### **Allegation (A) Abuse of Authority: Police Officer James Holder stopped the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that PO Holder pulled over the vehicle that § 87(2)(b) was driving on 160<sup>th</sup> Street in Queens. Under dispute is the reason for the vehicle stop.

In his testimony to the CCRB, § 87(2)(b) stated that he had not committed any traffic infractions and that the officers stopped the vehicle he was driving because they alleged that it smelled like marijuana (**04 Board Review**). Sgt. Espinal testified that although he could not recall whether he or PO Holder made the decision to stop the vehicle, the reason for the stop was a defective brake light (**05 Board Review**). PO Holder testified that he made the decision to stop the vehicle for speeding after he and Sgt. Espinal witnessed it travelling more than 40 miles per hour in a 25 mile per hour zone (**06 Board Review**). When § 87(2)(b) stopped, PO Holder noted that the vehicle's third brake light was out. Neither Sgt. Espinal's nor PO Holder's BWC show the vehicle speeding or a clear view of its brake lights because their recordings begin when § 87(2)(b) is already stopped with his car in park (**01-02 Board Review**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (B) Abuse of Authority: Police Officer James Holder frisked § 87(2)(b)**

**Allegation (C) Abuse of Authority: Police Officer James Holder searched § 87(2)(b)**

**Allegation (D) Abuse of Authority: Police Officer James Holder searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that Sgt. Espinal asked § 87(2)(b) to step out of the vehicle, at which time PO Holder patted down § 87(2)(b)'s sweatshirt and pants, entered his sweatshirt pocket, and then searched the vehicle. Also undisputed is the fact that PO Holder did not recover any marijuana during his search of § 87(2)(b) and the vehicle. Under dispute is whether the vehicle smelled like marijuana and whether PO Holder also entered § 87(2)(b)'s pants pockets.

In both his phone statement and his verified statement, § 87(2)(b) testified that the vehicle did not smell like marijuana **(04, 07 Board Review)**. § 87(2)(b) who arrived on the scene while PO Holder was searching the car, stated during her unverified phone statement that the vehicle did not smell like marijuana **(08 Board Review)**. Additionally, in both his phone and verified statements, § 87(2)(b) stated that PO Holder patted his crotch, entered the pocket of his hoodie, as well as the three pockets of his sweatpants, all of which were empty **(04, 07 Board Review)**.

In contrast to this, both Sgt. Espinal and PO Holder testified that they smelled the odor of marijuana immediately upon approaching the vehicle **(05-06 Board Review)**. During his testimony, PO Holder stated that the aforementioned odor of marijuana was the basis for his decision to conduct the subsequent pat-down and search of § 87(2)(b) as well as the vehicle search **(06 Board Review)**. PO Holder further testified that he patted § 87(2)(b)'s whole body down and then entered § 87(2)(b)'s hoodie after the pat-down revealed something that felt like a baggie, which turned out to be a bag of tobacco. Additionally, PO Holder stated that during his search of the vehicle, he searched the front of the vehicle, the front seats, the center console, the glove compartment, under the seats, the back seats, the pockets behind the front seats, the cupholders on the sides of the vehicle doors, and a fanny pack inside the vehicle. Sgt. Espinal stated that he did not recall if PO Holder frisked § 87(2)(b) or placed his hands inside of any of § 87(2)(b)'s pockets **(05 Board Review)**. Further, he did not recall the extent of PO Holder's vehicle search.

At 0:44 minutes in PO Holder's BWC attached to IA 44, PO Holder approaches the vehicle, asks § 87(2)(b) for his license and registration, and then asks § 87(2)(b) "Had a little smoky smoke today?" to which § 87(2)(b) says, "No," **(02 Board Review)**. At 0:42 minutes in Sgt. Espinal's BWC attached to IA 45, immediately upon approaching the vehicle, Sgt. Espinal states, "I smell some bud in your vehicle, sir. Somebody smoking today?" to which § 87(2)(b) says, "No," **(01 Board Review)**. § 87(2)(b) initially tells Sgt. Espinal, "I don't know why it smells like bud in here," at 0:56 minutes in the video, a statement that Sgt. Espinal testified to understanding as an acknowledgement of the marijuana odor **(05 Board Review)**. However, at 2:35 minutes in Sgt. Espinal's BWC attached to IA 45, § 87(2)(b) tells Sgt. Espinal, "Sir, you don't have any reason to pull over my car. It doesn't even smell like weed in there." At 5:52 minutes in Sgt. Espinal's BWC attached to IA 45, Sgt. Espinal asks § 87(2)(b) if she is familiar with the smell of marijuana **(01 Board Review)**. When she answers that she is, Sgt. Espinal asks her to go to the vehicle and tell him if she smells marijuana. § 87(2)(b) then walks to the vehicle, puts her head into the fully opened passenger window for three seconds, and states that she does not smell marijuana.

At 1:58 minutes in PO Holder's BWC attached to IA 44, PO Holder places his hands on the outsides of § 87(2)(b)'s pants and appears to frisk between his legs and down to his ankles. It is unclear whether he frisks § 87(2)(b)'s pockets or enters them **(02 Board Review)**. The same footage also shows PO Holder conducting the vehicle search between 2:16 and 4:53 minutes, during which time he searches the following areas: the front driver's side door compartment, including a plastic bag contained there; the center console; between the cushions of the driver's seat; the rear driver's side door compartment; plastic bags on the back seat; under a panel on the back of the front passenger's seat; and inside a black zip-up bag on the rear passenger's side door compartment. PO Holder is also heard searching other areas of the vehicle, although it is unclear from the footage which areas those are.

According to People v. Chestnut, 43 A.D.2d 260 (1974), the smell of marijuana smoke on its own can be sufficient to provide police officers with probable cause to search an automobile and its occupants (**09 Board Review**).

§ 87(2)(g)

**Allegation (E) Abuse of Authority: Police Officer James Holder interfered with § 87(2)(b)'s use of a recording device.**

It is undisputed that when Sgt. Espinal and PO Holder first approached the vehicle, § 87(2)(b) was recording the interaction on his cell phone. It is further undisputed that prior to stepping out of the vehicle, § 87(2)(b) placed his cell phone over the vehicle's center console. Under dispute is whether PO Holder interfered with that recording while conducting a search of the vehicle.

In his testimony to the CCRB, § 87(2)(b) stated that he was standing at the rear of the vehicle facing away so he could not see PO Holder searching the vehicle or turning off his cell phone recording (**04 Board Review**). Sgt. Espinal's BWC attached to IA 45 confirms this (**01 Board Review**). Although § 87(2)(b) could not see what PO Holder was doing at the time, he stated that his cell phone recording showed PO Holder opening the armrest and looking through the front of the vehicle when he noticed the phone recording him and turned it off (**04 Board Review**). PO Holder testified that he noticed the cell phone camera actively recording during the vehicle search but did not stop it (**06 Board Review**).

The cell phone video provided by § 87(2)(b) attached to IA 28 shows PO Holder entering the vehicle and pulling open the armrest at 0:31 minutes (**03 Board Review**). He is then seen looking in the direction of the cell phone, and at 0:34 minutes, the cell phone video ends. PO Holder's actions during the moments before the video ends are not visible. At 2:23 minutes in PO Holder's BWC attached to IA 44, PO Holder has his left hand on the driver's seat and his right hand is out of the camera view (**02 Board Review**). PO Holder is heard opening and closing compartments. At 2:31 minutes, PO Holder places both of his hands into the armrest. At 2:35 minutes, as PO Holder's left hand touches the inside of the front part of the center console, § 87(2)(b)'s cell phone is visible. PO Holder's face is visible on the screen and a red circle on the bottom of the screen indicates that the phone, which is an iPhone, is no longer recording. It remains unclear from the BWC whether PO Holder stopped the recording or the phone stopped recording on its own.

§ 87(2)(g)

**Allegation (F) Abuse of Authority: Police Officer James Holder damaged § 87(2)(b)'s property.**

As noted in a previous section, it is undisputed that PO Holder searched the interior of the vehicle that § 87(2)(b) was driving, which belonged to § 87(2)(b). Under dispute is whether PO Holder damaged the vehicle during the search.

In his verified statement to the CCRB, § 87(2)(b) stated that when he examined the vehicle after PO Holder's search, the back panel of the front passenger seat had been taken out (**04 Board**

**Review).** § 87(2)(b) provided two photographs to the investigation that show the back panel of that seat protruding so that the inside of the seat is visible (**10 Board Review**).

In her unverified phone statement, § 87(2)(b) stated that no seats in her vehicle were damaged after PO Holder's search (**08 Board Review**). PO Holder testified that he did not notice any damage to the panel behind the front passenger's seat before or after his search and did not recall if he pulled out a plastic panel during his search (**06 Board Review**). PO Holder also noted that neither § 87(2)(b) nor § 87(2)(b) complained to him or Sgt. Espinal about any damage to the interior of the vehicle. Sgt. Espinal did not recall if either § 87(2)(b) or § 87(2)(b) complained that the vehicle was damaged (**05 Board Review**). It is unclear from his BWC footage whether PO Holder pulls the seat panel out and whether there is damage to the seat before or after the vehicle search (**02 Board Review**).

§ 87(2)(g)

**Allegation (G) Abuse of Authority: Sergeant Edwin Espinal threatened to seize § 87(2)(b)'s property.**

In their statements, both § 87(2)(b) and § 87(2)(b) relayed that during the incident, Sgt. Espinal found grain-sized leaves on the floor of § 87(2)(b)'s vehicle and then told them that he could impound the vehicle (**04, 07 Board Review**). In his testimony, Sgt. Espinal stated that he did not believe he told § 87(2)(b) or § 87(2)(b) that the vehicle could be seized (**05 Board Review**).

Footage from both Sgt. Espinal's and PO Holder's BWCs, attached to IAs 45 and 44 respectively, shows the incident from the time the officers walk over to the vehicle that § 87(2)(b) was driving until the time that they walk back to their vehicle (**01-02 Board Review**). At 2:43 minutes in his BWC footage, Sgt. Espinal tells § 87(2)(b) "If you like, I'm pretty sure I can go in the car and I can find crumbs of marijuana in the car, and then I can take enforcement action against you." However, at no time in the BWC footage does either officer find grain-sized leaves or specifically mention impounding § 87(2)(b)'s vehicle.

§ 87(2)(g)

**Allegation (H) Abuse of Authority: Police Officer James Holder failed to provide § 87(2)(b) with a business card.**

**Allegation (I) Abuse of Authority: Police Officer James Holder failed to provide § 87(2)(b) with a business card.**

It is undisputed that neither Sgt. Espinal nor PO Holder provided their business cards to § 87(2)(b). It is further undisputed that PO Holder did not offer his business card to § 87(2)(b) and § 87(2)(b). Under dispute is whether PO Holder was following protocol when he did not offer his.

In his verified statement, § 87(2)(b) testified that neither Sgt. Espinal nor PO Holder provided him with a business card (**04 Board Review**). Sgt. Espinal testified that he identified himself to § 87(2)(b) and § 87(2)(b) and offered the both his business card, which they both refused (**05 Board Review**). PO Holder testified that he heard Sgt. Espinal offer his business card to § 87(2)(b).

and § 87(2)(b) both of whom refused the offer (**06 Board Review**). PO Holder further stated that he understood the Right to Know Act law as specifying that if one officer from a vehicle offers a business card to the civilian following a vehicle search, then the other officer need not offer theirs. Therefore, upon hearing Sgt. Espinal offer a business card to § 87(2)(b) and § 87(2)(b) PO Holder did not offer his.

At 5:27 minutes in Sgt. Espinal's BWC footage attached to IA 45, after the conclusion of the search, as § 87(2)(b) reenters the vehicle, Sgt. Espinal tells § 87(2)(b) "Like I said, I'm the sergeant here. Do you have any questions at all, any concerns, any information, you need my information?" (**01 Board Review**). § 87(2)(b) responds, "No I'm all right, sir, you did your job." At 6:40 minutes in the same video, Sgt. Espinal says to § 87(2)(b) "I'm the sergeant on scene, do you need my information at all?" § 87(2)(b) refuses the offer. At no time in either his BWC attached to IA 44 or Sgt. Espinal's BWC attached to IA 45 does PO Holder offer § 87(2)(b) or § 87(2)(b) his information.

New York City Administrative Code § 14-174 sets out protocol for identification of all police officers engaging in law enforcement activities such as frisks and searches of persons or property, including vehicles (**11 Board Review**). In such cases that do not result in an arrest or summons, officers who conduct law enforcement activities must offer a business card to the person who is the subject of those law enforcement activities.

NYPD Patrol Guide Procedure 203-09 regards the provision of officer identification in law enforcement activities that do not result in arrests or the issuance of summonses, including frisks and searches of persons or property, which includes vehicles (**12 Board Review**). In such cases, procedure states that officers must offer business cards upon the conclusion of law enforcement activities unless exigent circumstances are present.

The investigation has established that Sgt. Espinal proactively offered his information although not required in this situation since he did not frisk and search § 87(2)(b) nor did he search the car. Therefore, a failure to provide a business card allegation is not pleaded against him.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties (**13, 14 Board Review**).
- Sgt. Espinal has been a member of service for 15 years and has been a subject in 20 other CCRB complaints and 41 allegations, none of which were substantiated.
  - § 87(4-b), § 87(2)(g)
- PO Holder has been a member of service for eight years and has been a subject in eight other CCRB complaints and 19 allegations, three of which were substantiated. § 87(4-b), § 87(2)(g)  
In PO Holder's history, three previous allegations involved vehicle searches, two involved vehicle stops, and two involved frisks. Of these, a frisk allegation and a vehicle search allegation were substantiated.
  - Case #201502028 involved substantiated allegations of discourteous language against PO Holder. The Board recommended formalized training and the NYPD imposed command level instructions.
  - Case #201804023 involved substantiated allegations of a frisk and vehicle search. The Board recommended formalized training, which the NYPD implemented.
  - § 87(4-b), § 87(2)(g)

### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On March 11, 2020, a request to determine if a Notice of Claim was filed was submitted to the Comptroller's office, the results of which will be added to the case file upon receipt (**15 Board Review**).
- § 87(2)(b)
- According to OCA, § 87(2)(b) has no criminal convictions in New York City (**17 Board Review**).

Squad No.: 3

Investigator: Rachel Adler      Investigator Rachel Adler      4/2/2020  
Signature      Print Title & Name      Date

Squad Leader: Olga Golub      SL Olga Golub      4/02/2010  
Signature      Print Title & Name      Date

Reviewer:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Title